IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11014 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JUHABHAI L TALPADA

Versus

ALAMBHAI D PARMAR

Appearance:

1. Special Civil Application No. 11014 of 1993

MR HM PARIKH for Petitioner No. 1

MR VIKRAM J THAKOR for Respondent No. 1

MR OMKAR C DAVE for Respondent No. 1,3-11

NOTICE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 29/03/2004

ORAL JUDGEMENT

The present petition is filed under Article 227 of the Constitution of India challenging the judgment and order passed by the Deputy Collector,Anand dated 19th June 1989 passed in R.T.S. Appeal No. 46 of 1988 in setting aside the Entry No. 7772 which was in favour of

the petitioner, and remanding the matter to the Mamlatdar, Anand for deciding the same afresh after giving an opportunity to all the concerned parties and also the judgment and order passed by the Collector, Kheda dated 18.12.1991 in RTS RA Appeal No. 73 of 1989 and also the judgment and order dated 27th April 1993 passed by the learned Special Secretary (Appeals), Revenue Department, State of Gujarat in confirming the order passed by the Deputy Collector dated 19th June 1989.

2. It is the case of the petitioner that the petitioner had purchased land bearing Survey No. 696/2 situate in the Sim of Village Vansol, Taluka-Anand for a consideration by registered Sale Deed dated 30th April 1986. That the necessary mutation entry was also made on 10.10.1986 and the same came to be certified by Mamlatdar,Anand on 25.11.1986. That respondent No.1 herein had challenged the said entry being Entry No. 7772 which was certified on 25.11.1986 by which the name of petitioner was entered into Record of Rights, by way of an appeal before the Deputy Collector, Anand which was numbered as RTS Appeal No. 46 of 1988 contending inter alia that the said Entry No. 7772 dated 25.11.1986 is passed behind his back and no proceeding as required to be followed under the relevant provisions more particularly Section 135 of the Bombay Land Revenue Code are followed. It is further the case of respondent No.1 in the appeal that all through out the respondents No. 2 to 11 herein who had sold the land din question to the petitioner had lost upto the High Court and only possession is required to be taken and the same is pending before the Executing Court. Ultimately, the Deputy Collector by his judgment and order dated 19th June 1989 partly allowed the said appeal quashing and setting aside Entry No. 7772 while remanding the matter to the Mamlatdar, Anand (Now Mamlatdar, Umreth) for a fresh decision after considering the documentary evidence which may be produced before him.

3. That being aggrieved and dissatisfied with the judgment and order dated 19th June 1989 passed by the Deputy Collector, Anand passed in RTS Appeal No. 46 of 1988 the petitioner as well as respondent No.s 2 to 11 had preferred appeal before the Collector, Kheda, being RTS Appeal No. 73 of 1989. The Collector, Kheda,by his order dated 30th November 1990 dismissed the said appeal confirming the order passed by the Deputy Collector.

4. That being aggrieved and dissatisfied with the said judgment and order dated 30th November 1990 passed

by the Collector, Kheda in RTS Appeal No. 73 of 1989 dismissing the same and confirming the order passed by the Deputy Collector, the petitioner as well as respondents No. 2 to 11 had preferred a Revision Application No. SRD/KHD/HKP/2/92 before the learned Deputy Secretary (Appeals) and the learned Deputy Secretary (Appeals), vide his order dated 27th April 1993 dismissed the said revision application confirming the order passed by the Collector, Kheda as well as the Deputy Collector. Being aggrieved and dissatisfied with all the aforesaid 3 orders, the petitioner, who is the purchaser of the land bearing Survey No. 696/2 by sale deed dated 30th September 1986 has preferred the present Special Civil Application under Article 227 of the Constitution of India.

5. Shri HM Parikh, learned advocate appearing for the petitioner has submitted that the entry was certified on 25.11.1986 and the appeal was preferred before the Deputy Collector challenging the said entry after a period of 2 years and there is no application for condonation of delay and therefore the Deputy Collector could not have entertained the appeal in absence of any application for condonation of delay. He has also further submitted that at the relevant time when the entry was certified and when he has purchased the land in question the name of respondent No.1 herein was not in the Record of Rights and only those persons are required to be heard whose names are appearing in the Record of Rights and as the name of respondent No.1 was not in the REcord of Rights at the relevant time, there is no question of giving opportunity to the respondent No.1 and therefore the judgment and order passed by the Deputy Collector, Kheda in quashing and setting aside entry No. 7772 and remanding the matter to respondent No.2 requires to be quashed and set aside.

6. On the other hand, Shri J.S. Shah, learned appearing appearing on behalf of respondent No.1 has submitted that with regard to the land in question he has already succeeded before all the authorities upto the High Court and with a view to defeat the same the respondents No. 2 to 11 have sold the land in question to the petitioner and the respondents No. 2 to 11 have no right or title to sell the land in question to the petitioner and therefore the sale transaction between the respondents No. 2 to 11 and the petitioner was with a view to defeat the rights of respondent No.1 and at the relevant time when the entry No. 7772 was made, the procedure which was required under Section 135-C and D of Bombay Land Revenue Code was not followed and therefore

the Dy. Collector had rightly quashed the said entry No. 7772 and remanded the matter to the Mamlatdar for deciding afresh. He has also submitted that the only question was with regard to taking possession and for which execution proceedings are pending before the trial court. However, in the meantime, during the pendency of the present petition, the execution proceeded are not proceeded further. I fail to understand why the execution proceedings are not proceeded further merely because the question with regard to entry is pending before this Court. It is held by the Hon'ble Supreme Court as well as this Court that an entry does not confer any right, title or interest and inspite of that the execution proceedings pending before the trial Court. At this stage, Shri HM Parikh has also submitted that the land which is purchased by the petitioner by registered sale deed dated 30th September 1986 is diferent than that for which execution proceeding is pending and/or dispute between respondent No.1 and respondents No. 2 to 11 may be there. Be that as it may, in this present Sp.C.A. this Court is not concerned with regard to the right to land in question or any other dispute between the parties. What is challenged before this court is the order passed by the Deputy Collector,Anand by which entry No. 7772 has been set aside and the matter was remanded to the Mamlatdar, Anand (Mamlatdar, Umreth) for the purpose of deciding the same afresh after considering the evidence on record.

7. I have heard the learned advocates appearing for both the parties. By order of the Deputy Collector while quashing and setting aside the said entry No. 7772, the Deputy Collector has remanded the matter to the Mamlatdar, Anand by directing him to decide the same again on merits and after considering the evidence on record and the said judgment and order has been confirmed by appellate authority and the revisional authority. So, there are concurrent findings of facts and all the authorities below have found that at the time when the entry No. 7772 was mutated opportunity was not given to all the interested parties and the procedure which was required to be followed under Section 135-C & D of Bombay Land Revenue Code was not followed. Therefore, in view of the finding of facts given by all the authorities below, it is not proper for this Court to exercise the powers under Article 227 of the Constitution of India and as there is no jurisdictional error committed by all the authorities below. It is made clear that so far as the entry is concerned, it does not confer any right, title or interest in whose favour the name is entered into the Record of Rights. Therefore, there is no question of

deciding it on merits with regard to the rights of the parties, and this Court does not decide the same and express any opinion as to right of parties. I am dismissing the present Sp.C.A. exercising the powers under Section 227 of the Constitution of India mainly on the ground that it is only a remand order which is passed by the Deputy Collector. With these observations, the present Special Civil Application is dismissed. At-interim relief stands vacated. Rule is discharged with no order order as to costs.

rmr. [M.R. Shah, J.]